THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 29656 of 1998

Dated: 03.10.2007

Between:

The Depot Manager, APSRTC,
Tandur, Rangareddy Dist.

.... PETITIONER

AND

The Industrial Tribunal-cum-Labour Court-III,
Hyderabad and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 29656 of 1998

Order:

The petitioner-APSRTC, represented by its Depot Manager, Tandur, has filed this writ petition assailing the award dated 20.08.1997, passed by the Labour Court-III, Hyderabad, in I.D. No. 809 of 1993, directing the petitioner to reinstate the 2nd respondent-workman into service with continuity of service and all attendant benefits, but no back wages.

The 2nd respondent-workman was working as Conductor in the petitioner-APSRTC. He was issued a charge sheet alleging that while he was conducting the bus on the route Tandur to Rudraram on 31.03.1992, he committed certain cash and ticket irregularities. The 2nd respondent-workman submitted his explanation denying the charges framed against him. Dissatisfied with the same, an enquiry was conducted, and the Enquiry Officer, who conducted enquiry into the charges leveled against the 2nd respondent-workman, submitted his report holding that the charges leveled against the 2nd respondent-workman stood proved in the enquiry. The 2nd respondent-workman was furnished with the enquiry report and was called upon to submit his explanation. The 2nd respondent-workman submitted his explanation, but dissatisfied with the same, the petitioner, who is the disciplinary authority, vide orders dated 12.03.1993, removed the 2nd respondent-workman from service. Aggrieved by the removal order passed by the petitioner, the

2nd respondent-workman raised an industrial dispute in I.D. No. 809 of 1997, and the Labour Court, upon considering the rival contentions, the material and the evidence placed before it, passed the impugned award, setting aside the removal order of the 2nd respondent-workman, and directed the petitioner to reinstate the 2nd respondent-workman into service with continuity of service and all attendant benefits, but no back wages. Questioning the said award, the petitioner-APSRTC filed the present writ petition.

The main contention of the learned Standing counsel for the petitioner-APSRTC is that the Labour Court, having held that the charges are proved against the 2nd respondent-workman, ought not to have interfered with the removal order passed against the 2nd respondent-workman and ordered his reinstatement into service. He, thus, prays to allow the writ petition and set aside the impugned award.

On the other hand, learned counsel for the 2nd respondent-workman contends that since the Labour Court, by exercising its discretion under Section 11-A of the Industrial Disputes Act, 1947, set aside the removal order of the 2nd respondent-workman and ordered his reinstatement, no interference is called for therewith.

Heard the learned Standing Counsel for the petitioner-APSRTC and the learned counsel for the 2nd respondent-workman and perused the material available on record.

The 2nd respondent-workman, as is evident from the award, did not seriously challenge the procedural aspects and validity of the departmental enquiry, and therefore, the departmental enquiry was held valid. The 2nd respondent-workman was charge sheeted on three counts, namely (1) for having failed to observe the rule 'Issue and Start', (2) for having failed to issue two tickets in spite of collecting an amount of Rs.2/- only instead of collecting Rs.3/- from the passengers, and (3)

for having failed to close Rs.1-/, Rs.1.75 ps., Rs.2/- and Rs.2.25 ps., denomination tickets in the SR. The charges leveled against the petitioner, stood proved in the departmental enquiry. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service. The Labour Court, after considering the entire material placed before it, particularly Exs.M6 and M7, the passengers statement and spot explanation of the 2nd respondent-workman, came to the conclusion that the 2nd respondent-workman instead of collecting Rs.3/-, collected Rs.2/- only and failed to issue tickets to two passengers and accordingly held that the charges leveled against the 2nd respondent-workman are proved. However, on the ground that the amount involved is only Rs.3/-, the Labour Court modified the punishment and ordered reinstatement. When once the Labour Court had upheld the finding of the enquiry officer that the charge of misappropriation against the 2nd respondent-workman stood proved, it was not proper for it to order reinstatement of the

2nd respondent-workman into service on the ground that the amount involved is very small, and more so having regard to the settled law that when enquiry has been held to be fair and proper, and the charges leveled against the delinquent stood proved in the said enquiry, it is not open to the Tribunal/High Court to interfere with the punishment imposed by the disciplinary authority. In **Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane**[1], the apex Court held that while imposing punishment one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, and on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In the instant case, since the Labour Court is said to have not considered this aspect of the matter while modifying the order of removal passed by the petitioner against the

2nd respondent-workman, I am of the considered opinion that the ends of justice would be met if the matter is remanded to the Labour Court for adjudication of the matter on the question of imposition of appropriate punishment having regard to the nature of proved charges.

In the above view of the matter, the award passed by the Labour Court cannot be sustained, and the same is accordingly set aside. The writ petition is allowed. The matter is remanded to the Labour Court for adjudication of the question of quantum of punishment to be imposed, considering the fact that it upheld the validity of the enquiry, which held that the charges leveled against the 2nd respondent-workman are proved, and to pass appropriate orders after taking into consideration the entire material available on record and exercising its discretion under Section 11-A of the Industrial Disputes Act, 1947. No costs.

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N.V. RAMANA, J.

Date: 03.10.2007
Nsr

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[1] (2005) 3 SCC 254